
(2016) 03 GAU CK 0033
In the Gauhati High Court
Case No : Writ Appeal No. 17(K) of 2013

Smti. L. Chongji Phom

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Citation : (2016) 4 GauLR 334

Hon'ble Judges : Mr. Ajit Singh, C.J. and N. Chaudhury, J.

Bench : Division Bench

Advocate : Mr. R. Iralu, Sr. Advocate and Mr. K.D. Solo, Advocate, for the Appellant; Mr. K. Sema, Addl. Advocate General, Nagaland and Mr. K. Wotsa, Govt. Advocate, Nagaland, for the Respondent

Final Decision : Dismissed

Judgement

N. Chaudhury, J. (Oral) - In this writ appeal, the writ petitioner of W.P.(C) No.249(K) of 2011 has challenged the judgment and order dated 8.7.2013 passed by the Hon'ble Single Bench whereby his writ petition was dismissed on merit.

2. The case of the writ petitioner is that she was awarded certificate after successfully completing the course of knitting conducted by the Directorate of Employment & Craftsmen Training, Nagaland. Thereafter, vide order dated 19/11/2001, she was appointed as Knitting Instructor at the Government Middle School, Yongnyah. It is claimed that the aforesaid post was created vide Government Order No. EDS/9-50/83 dated 31.5.1986. In the month of July, 2003, there was a transfer whereby the petitioner was transferred from Government Middle School, Yongnyah to Government Middle School, Kangching vice one Smt. H. Tongyung Phom. According to her, she continued to work at Government Middle School, Kangching till 2006 when the Department of School Education carried out a verification process to locate and weed out bogus and illegal appointees. In course of such operation, the petitioner was asked to furnish her appointment letter and she produced the same. After the exercise

was completed, it was found that although three lists of appointees that were published, namely, the genuine list, bogus list and absentee list, the petitioner's name did not figure in any of the aforesaid lists. Situated thus, she approached this Court by filing writ petition being W.P.(C) No.143(K) of 2009. The aforesaid writ petition was disposed of by giving a direction to the authorities for holding an enquiry. The enquiry was, thereafter, held and by order dated 12.08.2011, it was opined that in course of enquiry held on 8.6.2011 at GMS Yongnyah in presence of Head Teacher of the School, the petitioner Smti. Chongji Phom was found absent and rather one Smt. Tongyong was found working there. With these findings, her appointment was held as in genuine.

3. According to the writ petitioner, since her appointment was at GMS Kangching, there was no question of her being present in GMS Yongnyah. She further claimed that she was sent to undergo training and that she was also granted maternity leave in 2005 and all those documents were placed before the enquiry committee, but to no avail. Being compelled, she filed yet another W.P.(C) No.249/11 and during pendency of this writ petition, the State Respondent instituted a second enquiry to find out the genuineness of her appointment. The report dated 20.02.2012 is the outcome of the second enquiry. She has prayed for setting aside both the findings recorded in letter dated 12.8.2011 and 20.2.2012 and claimed all consequential benefits like arrear salaries, current salaries, etc.

4. According to the petitioner, she was duly appointed and she was a genuine candidate, yet she has been deprived of the benefit of the service since 2006. The enquiry was conducted during the period from 2006 to 2008 and, thereupon, it was held that the file records of the appointment letters etc. could not be traced out by the Department and, consequently, her appointment was held to be forged and fabricated.

5. On the other hand, it is the opinion of the State that although the post was created way back in the year 1985, yet the petitioner was appointed against the said post only on 19.11.2001 and it was rather unbelievable that a post would remain vacant for a period of more than fifteen years, more so, when there is huge craze everywhere to fill whenever there is any Government post and vacancy. The Government respondent was of the view that the petitioner was transferred from GMS Yongnyah to GMS Kangching to GMS Kangching on 3.7.2003 by an order passed by an unauthorized officer. It was found that the Sub-Inspector of Schools who does not have the authority to transfer an employee of the Education Department signed the transfer order. Normally, the transfer orders are passed by the Government through the Directorate of School Education and so all these facts only point out to the irresistible conclusion that the petitioner's appointment was not a genuine one.

6. The Hon'ble Single Judge considered the averments made in the writ petition as well as the view of the Government in this regard and arrived at a definite finding that the petitioner could not establish that her appointment was in

accordance with law requiring a direction to the State Government for her reinstatement. This judgment and order dated 8.7.2013 passed by the learned Single Judge has been called upon in question in the present writ petition.

7. We have heard Mr. R. Iralu, learned senior counsel assisted by Mr. K.L. Solo, learned counsel for the appellant and Mr. K. Sema, learned Additional Advocate General, Nagaland assisted by Mr. K. Wotsa, learned Government Advocate, Nagaland. We have also perused the materials placed on record.

8. Mr. R. Iralu, learned senior counsel appearing for the writ appellant would argue that the writ petitioner was appointed in the year 2001 against a sanctioned vacancy, that the post was duly created in the year 1986 and so her appointment cannot be said to be illegal or bogus. Moreover, the writ petitioner was transferred in the year 2003 to GMS, Kangching vice one Smt. H. Tongyung Phom whose appointment letter is also brought on record. On perusal of the appointment letter of Smt. H. Tongyung Phom, it would be clear that she was appointed on regular basis and so it is natural that when petitioner was transferred to a sanctioned post vice a regular appointee, her appointment must be genuine. According to Mr. Iralu, the Government did not produce the record saying that the file was missing and the petitioner cannot be penalised for mistake on the part of the custodian of records.

9. Per contra, Mr. K. Sema, learned Additional Advocate General, Nagaland would argue that the writ petitioner was appointed by an order of the Joint Director, which does not fit in the original format of appointment order under similar circumstances. Mr. Sema would argue that appointment letter of Smt., H. Tongyung Phom discloses that the appointment order was preceded by a selection process. Smt. H. Tongyung Phom was appointed in the year 1999 following the recommendation of the Sub-Divisional Selection Board. The appointment of the writ petitioner, on the other hand, made in the year 2011 does not disclose that her appointment was preceded by any selection process. Mr. Sema further argues that subsequently the arrangement was made between Smt. H. Tongyung Phom and the writ petitioner and, thereby, she was transferred to GMS Kangching and this transfer order is also not a valid one and there is no record to that effect with the government. This would naturally go to show that the writ petitioner was not duly appointed nor any selection process was followed before her appointment. Under the circumstances, it was obvious that the appointment of the writ petitioner was illegal. With these arguments, Mr. Sema, learned Additional Advocate General prays that the writ petition is devoid of any merit and prays for upholding the judgment and order passed by the learned Single Judge.

10. We have given our anxious consideration to the arguments put forward by the learned counsel for the parties. We have also considered the materials available on record. The Hon''ble Single Judge considered the appointment letters of the writ petitioner as well as that of Smt. H. Tongyung Phom and observed that while the appointment letter of Smt. H. Tongyung Phom was issued by

following a particular format disclosing that it was preceded by selection, the same is not disclosed in the appointment letter of the writ petitioner. It was duty of the writ petitioner to show that she was duly selected before the appointment letter was issued. The appointment letter of Smt. H. Tongyung Phom which has been annexed to the writ petition as Annexure-C is indicative of the fact that she was appointed on the recommendation of the Sub-Divisional Selection Board, but the appointment letter of the writ petitioner does not disclose so. The writ petitioner was transferred to GMS Kangching from GMS Yongnyah vice Smt. H. Tongyung Phom by an order dated 12.7.2003 and this order was also issued by an order on behalf of the Deputy Inspector of Schools but not even by the Deputy Inspector. Such a transfer order does not inspire confidence of the Court more so when the very validity of the appointment letter of the writ petitioner is doubtful. When the writ petitioner has claimed that the post was created in the year 1986 and she was appointed in the year 2001, there is no doubt that there was sanctioned vacancy, but she has failed to produce any scrap of paper to support her contention that there was a selection process and that she was duly appointed by the appropriate authority. The appointment letter of Smt. H. Tongyung Phom annexed at Annexure-C of the writ appeal cut at the root of the whole matter and discloses that her appointment was made on the basis of the recommendation of the Sub-Divisional Selection Board. Smt. H. Tongyung Phom was appointed by following a selection process in the year 1999 and the same process was not followed in the case of the writ petitioner in the year 2011. In that event, the finding of the Hon"ble Single Judge that the writ petitioner could not establish her appointment to be regular has valid reason and basis.

11. In course of argument Mr. R. Iralu, the learned counsel appearing on behalf of the appellant admitted that there is nothing on record to suggest that there was advertisement and consequent selection process before issuing appointment letter of the writ petitioner. The fact that there was an enquiry in the year 2006 by the authority to find out fake, forged or illegal appointments in education department is suggestive of the fact that there must have been large scale fake or forged appointments. Naturally, a section of the officers of the department must have been involved as otherwise there cannot be such appointment. On the background of such facts, Mr. K. Sema, learned Additional Advocate General submitted that the very signature on the alleged transfer order of the petitioner to Kangching is of one Sub-Inspector of Schools who has no authority of passing such order. According to him, signature of the appointing authority on the appointment letter of the petitioner is forged. Considering all these aspects of the matter, it is clear that writ petitioner could not show by preponderance of probability that her case does not fall in the category of bogus appointment as alleged.

12. In view of what are discussed above, we are of the considered view that the Hon"ble Single Judge has not committed any error in dismissing the writ petition. The writ appeal is devoid of any merit. It is, accordingly, dismissed.

13. No order as to cost.